

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-217208

DATE: March 25, 1985

MATTER OF: San Diego Aircraft Engineering, Inc.

DIGEST:

1. Agency was not obligated to request revival of expired bid and to award contract to second low bidder after contract with low bidder was rescinded because of a mistake in bid.
2. Claims that agency failed to verify mistake in bid and to find that low bidder could not meet delivery schedule were first raised in response to agency report and are untimely under GAO Bid Protest Procedures.
3. GAO does not conduct independent investigations in connection with its consideration of a bid protest in order to discover additional bases for protest. Rather, the protester has the burden of affirmatively proving its case.

San Diego Aircraft Engineering, Inc. (SANDAIRE), protests the decision of the Naval Regional Contracting Center, Long Beach, California, not to award SANDAIRE a contract for remote control systems for powered target boats under invitation for bids (IFB) No. N00123-84-B-0727 and to resolicit the procurement under IFB No. N00123-85-B-0358. We deny the protest in part and dismiss it in part.

The Navy opened bids under the original solicitation on August 28, 1984, and SANDAIRE was the second low bidder. After receiving the contract, the low bidder, Trionics, Inc., discovered a mistake in its bid price and requested either reformation or rescission of the contract. The Navy agreed to a "no-cost cancellation" of the contract. The contracting officer decided to issue a second solicitation rather than award a contract

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to SANDAIRE because the original acceptance period for SANDAIRE's bid had expired. He believed that an award to SANDAIRE was not legally justifiable and that such an award would be unfair to other bidders given the time that had passed since the original bid opening. A second solicitation was issued on December 6, and bids were opened on January 3, 1985.

SANDAIRE contends that it became the low bidder under the initial IFB when Trionics' contract was canceled and the Navy should have awarded a contract to SANDAIRE without resoliciting the procurement. SANDAIRE also asks that we conduct an investigation of the activities of the Navy and Trionics in connection with the canceled contract.

The Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.406-4(b) (1984), authorizes rescission of a contract on the basis of clear and convincing evidence that a mistake in bid was made. The regulations provide no direction or guidance regarding how procuring agencies should proceed following such a rescission. We believe that, since the initial bid acceptance period had expired, the Navy was not obligated to ask SANDAIRE to revive its bid and to award a contract to it without recompeting the requirement.

In its comments on the Navy's administrative report on the protest, SANDAIRE argues that the original contract award to Trionics was improper. SANDAIRE contends that the contracting officer should have requested verification of Trionics' bid because Trionics' mistake was apparent at bid opening. Trionics' bid (\$182,046) was well below the government estimate (\$240,000) and the next lowest bid (\$216,204). SANDAIRE also contends that the Navy's preaward survey should have disclosed both the mistake in bid and Trionics' inability to meet the required delivery schedule.

These contentions, concerning the propriety of the award to Trionics, are untimely and will not be considered. Our Bid Protest Procedures require that protests be filed within 10 days after the basis for the protest is known or should have been known. 4 C.F.R. § 21.2(b)(2) (1984). The agency awarded the contract to Trionics on September 11. Therefore, the protester's objections to the award procedure raised more than

5 months later are clearly untimely. See Waltham Precision Instruments, Inc., B-215568, July 20, 1984, 84-2 CPD ¶ 73.

Finally, with respect to SANDAIRE's general request for an investigation of the activities of the Navy and Trionics, it is not our practice in connection with a bid protest to conduct investigations to discover additional bases for protest. Rather, the protester has the burden of affirmatively proving its case. M&H Mfg. Co., Inc., B-191950, Aug. 18, 1978, 78-2 CPD ¶ 129.

The protest is denied in part and dismissed in part.

for *Signature Efor*
Harry R. Van Cleve
General Counsel